REMARKS

In response to the Office Action mailed July 24, 2007, Applicants respectfully request reconsideration of the Application in view of the foregoing Amendments and the following Remarks. The claims as now presented are believed to be in allowable condition.

Claims 4, 6, 10-11, 15, 17, and 21-22 have been canceled, and claims 1, 5, 12, and 16 have been amended. Claims 1-3, 5, 7-9, 12-14, 16, and 18-20 remain in this application, of which claims 1 and 12 are independent claims.

Rejection of Claims 1-3, 8, 12-14, and 19 under 35 U.S.C. §102(b)

Claims 1-3, 8, 12-14, and 19 are rejected under 35 U.S.C. §102(b) as being anticipated by Makita et al. (JP Application No. 10-138420, hereafter referred to as "Makita"). Applicants respectfully traverse this rejection.

Claims 1 and 12 have been amended to recite that the step of terminating retrying of reading or writing of the data if the required time period is greater than a remaining retrying limitation time is performed ***only when*** the data is of the predetermined type of data, and that the step of terminating retrying of reading or writing of data if the total count of retries is greater than the predetermined maximum number of retries is performed ***only when*** the data is not the predetermined type of data.

FIG. 1 of Makita shows ***both*** using the time limit (step 108 of FIG. 1 of Makita) and using the count limit (step 112 of FIG. 1 of Makita) in series to limit the retry process. Thus, Makita does not even remotely mention using only one of the time limit or the count limit for the retry process depending on the type of data.

Similarly, Sato et al. (JP Application No. 09-217835, hereafter referred to as "Sato") at FIG. 5 of Sato discloses using ***both*** the time limit (step S3-3 in FIG. 5 of Sato) and the count limit (step S3-4 in FIG. 5 of Sato) in series when limiting the retry for any type of data.

Furthermore, claims 1 and 12 have been amended to recite that a same order of retry types is followed according to a retry table for both when the data is the predetermined type and when the data is not the predetermined type. An example of such an order and such a retry table is disclosed at page 6, line 29 of the Present Application which discloses that such an order of the common retry table is followed at step 50 of FIG. 3 (for the AV data) and step 70 of FIG. 4 (for the non-AV data) of the Present Application.

In contrast, note that U.S. Patent No. 6,363,211 to Kanota et al. (hereafter referred to as "Kanota") discloses using different types of retries in a writing process (steps S18 and S20 in FIG. 7 of Kanota disclosing limiting or not limiting writing with seek to replacement sector depending on data type) or using different retry types for a reading process (steps S26 and S27 in FIG. 8 of Kanota). For example, Kanota at col. 9, lines 12-14 discloses just not performing certain a type of retry process (such as not performing the "rotation wait time" retry type) for AV data.

Thus, Kanota which touts using completely different types of retry steps depending on data type ***teaches away*** from following a same order of retry types according to a common retry table for both when the data is the predetermined type and when the data is not the predetermined type.

Anticipation of a claimed invention requires the presence in a single prior art document of ***each and every*** element of the properly construed claim. The Federal Circuit has set out the following requirements for anticipation pursuant to 35 U.S.C. §102:

> ...that a patent claim is anticipated under 35 U.S.C. §102 "must demonstrate, among other things, identity of invention."...[O]ne who seeks such a finding must show that each element of the claim in issue is found, either expressly or under principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice.
> Minnesota Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 1565 (Fed. Cir. 1992).

Because Makita does not disclose, teach, or suggest all of the limitations of amended claims 1 and 12, the rejection of claims 1 and 12 under 35 U.S.C. §102(b) in view of Makita should be withdrawn.

In addition, for the above-stated reasons, claims 1 and 12 are believed to be patentable over Sato and Kanota, either individually or in combination with Makita.

Claims 2-3 and 8 which depend from and further limit claim 1, are allowable for at least the same reasons that claim 1 is allowable as stated above.

Claims 13-14 and 19 which depend from and further limit claim 12, are allowable for at least the same reasons that claim 12 is allowable as stated above.

Rejection of Claims 4-7, 9-11, 15-18, and 20-22 under 35 U.S.C. §103(a)

Claims 4-7, 9-11, 15-18, and 20-22 are rejected under 35 U.S.C. §103(a) as being unpatentable over Makita in view of Kanota and/or Sato.

Claims 4, 6, 10-11, 15, 17, and 21-22 have been canceled

Claims 5, 7, and 9 which depend from and further limit claim 1, are allowable for at least the same reasons that claim 1 is allowable as stated above.

Claims 16, 18, and 20 which depend from and further limit claim 12, are allowable for at least the same reasons that claim 12 is allowable as stated above.

Conclusions

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,
for the Applicant(s)

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CERTIFICATE OF MAILING

The undersigned hereby certifies that the foregoing AMENDMENT AND RESPONSE is being deposited in the United States Postal Service, as first class mail, postage prepaid, in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 23rd day of October, 2007.

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